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IN THE

# SUPREME COURT OF THE UNITED STATES

~~1965~~ 172

OCTOBER TERM, 1965

PAUL B. JOHNSON, GOVERNOR, JOE T. PATTERSON, ATTORNEY GENERAL, AND HEBER LADNER, SECRETARY OF STATE, OFFICERS OF THE STATE OF MISSISSIPPI,
*Petitioners,*

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioners, officers of the State of Mississippi, Paul B. Johnson, Governor; Joe T. Patterson, Attorney General; and Heber Ladner, Secretary of State; pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit entered in the above styled cause against them in their capacity as such officers of the State of Mississippi on March 8, 1966, rehearing having been denied on April 20, 1966.

## CITATIONS OF OPINIONS BELOW

The opinion of the District Court, set forth at R. 135-164, was not reported. The entire opinion is attached as Appendix A hereto, with portions concerning Count II italicized. The opinion of the Court of Appeals is reported 357 F.2d 831. The opinion of the Court of Appeals is attached hereto as Appendix B with the portions concerning Count II italicized.

## JURISDICTION

The judgment of the Court of Appeals was entered March 8, 1966. Petition for rehearing was denied April 20, 1966. Jurisdiction of this Court is invoked under 28 U.S.C., §1254(1).

## QUESTIONS PRESENTED

I.

Does the District Court have jurisdiction to order by permanent mandatory injunction the manner in which the Governor will exercise discretion, vested in him by valid State statutes, as it was directed to do by the opinion of the Court of Appeals?

II.

Has the doctrine of exclusion, whereby a State may place conditions upon the right of a foreign corporation to do business within the State or withhold its approval entirely, been overruled or abolished or is the New York corporation, National Association for the Advancement of Colored People, vested with privileges and immunities of a citizen of the United States under the Fourteenth Amendment?

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eleventh and Fourteenth Amendments of the Constitution of the United States are involved in this case. Sections 5310.1, 5319, 5339, 5340, and 5341, Miss. Code of 1942, Recp., are also involved and are attached as Appendix C hereto.

## STATEMENT OF THE CASE

The original complaint, brought by the corporate respondent, and several individuals, was in two counts. The first count was directed against certain local officers and dealt with alleged violations of constitutional rights of individual citizens and injunctive relief was sought. No injunction was issued by the District Court against the local officers on Count I. A limited injunction was ordered to be issued on Count I by the Court of Appeals. Neither the individual plaintiffs nor the defendants to Count I have sought further review. Therefore, neither the individual citizens nor the local officials are subject to this petition, and constitutional rights of individual citizens are not at issue or involved in this phase of the case.

By Count II of the complaint, the corporate respondent sought to have the Court order Mississippi through these petitioners to approve the application of the New York corporation for domestication in Mississippi. No other relief was sought against these petitioners and no proof whatsoever was offered to show that these petitioners or anyone acting for or in concert with them did anything to deprive or seek to deprive any of the individual plaintiffs of any right whatsoever. Indeed, the exercise by the plaintiffs of their various constitutional rights, including freedom of association by membership in the corporate re-

spondent, have been freely and fully enjoyed. There is not one whit of evidence to show that any constitutional right of any individual citizen of the United States has been or will be invaded, violated or infringed upon by the failure of these petitioners to approve the application of the corporation for domestication.

The facts dealing with Count II are not in dispute. The application for domestication was filed, it was processed to the Governor, and he, in the exercise of his discretion, withheld his approval thereof entirely (R. 320). The fact that the application of the National Association for the Advancement of Colored People for domestication was handled in the same manner as all other foreign non-profit corporations (R. 345-350) is not disputed. The New York corporation was accorded due process and equal protection by such equal treatment.

The Court of first instance concluded that there was no basis for Federal jurisdiction and the District Court held that it did not have jurisdiction to order the approval of the application for domestication. The Court of Appeals ordered the District Court to order the approval of the application for domestication without giving it the benefit of informing it wherein jurisdiction to do so would lie.

## REASONS FOR GRANTING THE WRIT

### Introduction

The opinion and order of the Court of Appeals should be reviewed by this Court for the following reasons:

I. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision in the matter of jurisdiction of the District Court to comply with the order of the Court of Appeals.

II. The issue of the direction by a Federal court of the manner in which the Chief Executive of a state will exercise discretion vested in him by valid state statutes is of utmost importance to the maintenance of the Federal-state relationship and proper and orderly judicial process.

III. There is a direct conflict between the decision of the Court of Appeals of which review is being sought and decisions of the Supreme Court concerning the doctrine of exclusion whereby the Supreme Court has held that a state may impose conditions upon the right of a foreign corporation to do business within that state or may exclude the corporation altogether.

IV. The Court of Appeals misconceived, misapplied and misconstrued a decision of the Supreme Court in arriving at its conclusion that the District Court should grant affirmative relief to the foreign corporation against the State of Mississippi.

V. In ordering the granting of affirmative relief in favor of the foreign corporation against the State of Mississippi, the Court of Appeals has decided a Federal question in a way in conflict with applicable decisions of the Supreme Court.

## ARGUMENT

### I.

### The District Court Does Not Have Jurisdiction to Comply with the Order of the Court of Appeals.

The Court of first instance held that there was not any basis for Federal jurisdiction, and the opinion and order of the Court of Appeals that the relief be granted fails wholly to show wherein jurisdiction to do so would lie. The District Court is in the position as having held, as a

matter of law, that jurisdiction to grant the relief sought against these petitioners does not exist, and of having been ordered by the Court of Appeals to grant the relief. The opinion of the Court of Appeals did not give the District Court any indication of what it considered to be the basis for jurisdiction of the District Court. The jurisdictional issue was raised in the District Court (R. 81 and 82), and ruled on by that Court, Appendix A, and in the Court of Appeals (R. 1806-1809) and ruled on by that Court (R. 1826).

Jurisdiction of the Court is fundamental and ". . . a review of the sources of the Court's jurisdiction is a threshold inquiry appropriate to the disposition of every case that comes before us."[1]

These petitioners, the Governor, the Attorney General and the Secretary of State of the State of Mississippi, in withholding the approval of the application for domestication of respondent corporation, acted in accordance with authority vested in them as such state officials and their action therefore was state action. Section 5340, *supra*, authorizes the Governor to take the advice of the Attorney General and to approve, require amendments prior to approval, ". . . or if deemed expedient by him he may withhold his approval entirely."

The record shows without dispute that the application for domestication has, in fact, been denied and the approval of the state withheld entirely.

There cannot then be any doubt that the Court of Appeals by ordering the issuance of the permanent mandatory injunction is ordering the District Court to exercise jurisdiction over one of the United States in a suit by citizens and persons of another state.

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1. *Brown Show Company* v. *United States*, 370 U.S. 294.

Jurisdiction of the Court to grant such relief was removed by the *Eleventh Amendment* of the Constitution of the United States.

The principle of sovereign immunity has been the subject of considerable litigation in the Courts of the United States.

In *Malone* v. *Bowdoin*[2] the Court said:

> "While it is possible to differentiate many of these cases upon their individualized facts, it is fair to say that to reconcile completely all the decisions of the Court in this field prior to 1949 would be a Procrustean task.
>
> "The Court's 1949 Larson decision makes it unnecessary however, to undertake that task here."

In *Larson* v. *Domestic and Foreign Commerce Corporation*,[3] the Court announced the rules applicable to this case:

> "The question becomes difficult and the area of controversy is entered when the suit is not one for damages but for specific relief: i.e., the recovery of specific property or monies, ejectment from land, *or injunction either directing or restraining the defendant officer's action.* In each such case the question is directly posed as to whether, by obtaining relief against the officer, relief will not, in effect, be obtained against the sovereign. For the sovereign can act only through agents and, when an agent's actions are restrained, the sovereign itself may, through him, be restrained. As indicated, this question does not arise because of any distinction between law and equity. It arises whenever suit is brought against an officer of the sovereign in which the relief sought from him is not compensation

2. *Malone* v. *Bowdoin*, 369 U.S. 642.

3. *Larson* v. *Domestic and Foreign Com. Corp.*, 337 U.S. 682.

for an alleged wrong but, rather, the prevention or discontinuance, in rem, of the wrong. *In each such case the compulsion, which the court is asked to impose, may be compulsion against the sovereign, although nominally directed against the individual officer. If it is, then the suit is barred, not because it is a suit against an officer of the Government, but because it is, in substance, a suit against the Government over which the court, in the absence of consent, has no jurisdiction.*

* * *

"In a suit against an agency of the sovereign, as in any other suit, it is therefore necessary that the plaintiff claim an invasion of his recognized legal rights. If he does not do so, the suit must fail even if he alleges that the agent acted beyond statutory authority or unconstitutionally. But, in a suit against an agency of the sovereign, it is not sufficient that he make such a claim. Since the sovereign may not be sued, it must also appear that the action to be restrained or directed is not action of the sovereign. The mere allegation that the officer, acting officially, wrongfully holds property to which the plaintiff has title does not meet that requirement. True, it establishes a wrong to the plaintiff. But it does not establish that the officer, in committing that wrong, is not exercising the powers delegated to him by the sovereign. *If he is exercising such powers the action is the sovereign's and a suit to enjoin it may not be brought unless the sovereign has consented.*"

Even though the Court, in both *Malone, supra,* and *Larson, supra,* was dealing with sovereign immunity as it applies to agencies of the Federal Government, the principles announced are equally applicable to an action against state officers because such action not only involves sovereign immunity but this Court is prohibited by the *Eleventh Amendment, supra,* from exercising jurisdiction in such cases.

Since the relief ordered is a permanent mandatory injunction directed against the State, it is clear that the rules quoted above and relied upon by the District Court are opposed to granting of the relief sought.

The actions of these petitioners in this matter were acts of the State of Mississippi. These petitioners were only acting for the State in dealing with the corporate respondent. If the Court declines to review the opinion of the Court of Appeals, the District Court will be forced to act against the State. The State will be the party compelled to act as effectively as though it were a party in name as well as in fact.

The compulsion, which the Court of Appeals ordered, if imposed, will be compulsion against the sovereign, although nominally directed against the individual officers. It cannot be considered otherwise because the present Governor, against whom the compulsion is directed, has not even considered the matter.

The compulsion sought is clearly against the sovereign, which has not consented to being so compelled, and is therefore barred by the *Eleventh Amendment, supra.*

The jurisdiction of a Federal court must not be determined upon the conclusion on the merits of an action but upon a consideration of the grounds upon which the Federal jurisdiction is invoked.[4]

The fact that the Court of Appeals had jurisdiction to order limited relief against the local officials does not add to its jurisdiction to order the relief directed against these petitioners. A Federal Court is without the judicial power to entertain a cause of action not within its jurisdiction merely because that cause of action has mistakenly been

4. *Flanders* v. *Coleman*, 250 U.S. 223.

joined in the complaint with another which is within its jurisdiction.[5]

## II.

### A Permanent Mandatory Injunction to Affirmatively Require a Public Official to Perform an Act Is, in Effect, Equivalent to a Writ of Mandamus and Does Not Lie to Control the Manner in Which Discretion Will Be Exercised.

The approval or disapproval of applications for domestication of foreign non-profit corporations is vested by State statute in the Governor.[6] The Court will note that the statute authorizes the Governor, in the exercise of his executive discretion, to withhold his approval entirely when acting upon corporate charter applications. This is exactly what has been done in the instant case, and the exercise of that executive discretion should not be the subject of the issuance of a permanent mandatory injunction as directed by the Court of Appeals.

The issuance of a permanent mandatory injunction to affirmatively require a public official to perform an act is, in effect, equivalent to a writ of madamus, and is governed by like considerations.[7]

The State statute clearly and beyond question vests discretion in the Governor of the State of Mississippi as to whether or not he will grant an application for domestication of a foreign corporation when it provides for the granting of such an application and then provides ". . . *or if deemed expedient by him he may withhold his approval entirely.*"

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5. *Hurn* v. *Oursler*, 289 U.S. 238.
6. See Appendix C.
7. *Miguel* v. *McCarl*, 291 U.S. 442.

The remedy of mandamus is, in the main, restricted to situations where ministerial duties of a non-discretionary nature are involved, as where the matter is peradventure clear, or an administrative agency is clearly derelict in failing to act, or the action or inaction turns on a mistake of law.[8]

As heretofore shown, the act performed by the former Governor of Mississippi in rejecting the application of corporate appellant was clearly the exercise by him of discretion vested in him by the statutes and laws of the State, which said laws shall be regarded as rules of decision by this Court.[9]

Where an officer is given discretion, mandamus and permanent mandatory injunction being comparable and governed by like consideration, neither will issue to control a public officer in discharging an official duty which requires the exercise by him of judgment and discretion.[10]

Among the concerns which have traditionally counseled a federal court to abstain from blocking the exercise by state officials of their appropriate functions are the desirability of avoiding unseemly conflict between two sovereignties, the unnecessary impairment of state functions, and the premature determination of constitutional questions.[11]

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8. *Panama Canal Co.* v. *Grace Line, Inc.*, 356 U.S. 309.

9. 28 *U.S.C.* 1652.

10. *Work* v. *United States ex rel. Rives*, 267 U.S. 175; *United States ex rel. Riverside Oil Co.* v. *Hitchcock*, 190 U.S. 316; *Marbury* v. *Madison*, 1 Cranch 137.

11. *Martin* v. *Creasy*, 360 U.S. 219.

## III.

**The Doctrine of Exclusion, Whereby a State Is Authorized to Impose Conditions upon the Right of Foreign Corporations to Do Business Within the State or to Exclude Them Altogether, Is a Valid Subsisting Doctrine of the Supreme Court and the Opinion of the Court of Appeals and Order Directed Thereby Is in Conflict Therewith.**

One of the fundamental legal differences between a natural-born citizen and a corporation in the jurisprudence of this nation is that a natural-born citizen can move freely from state to state, whereas a corporation, being a creature of the state of its creation, moves from that state to all other states by the grace and permission of the state into which it seeks to move. The two exceptions to that distinction are: (1) that corporations engaged in interstate commerce may not be restricted to the state of their creation;[12] and (2) the right of exclusion may not be exercised so as to deprive the corporation of any constitutional right which it, the corporation, may have as distinguished from the constitutional rights of the shareholders or members of the corporation.[13]

The burden of proof was on the corporation to show that it, as a corporate entity as distinguished from its members, was entitled to the relief sought in this case both as a matter of fact and as a matter of law.[14]

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12. Art. I, Sec. 8, Cl. 3, *U. S. Constitution.*

13. *Terral* v. *Burke Construction Co.*, 257 U.S. 529.

14. The United States Supreme Court held in *New Orleans & Northeastern R. Co.* v. *Harris*, 247 U.S. 369: "The burden of proof is on the plaintiff in making out its cause of action, and this burden of proof must be satisfied in order to sustain the decision or finding in favor of the party on whom the burden rests." 31A *C.J.S.* 164, *et seq.*, Evidence, §103, *et seq.*

*Asbury Hospital* v. *Cass County*, 326 U.S. 207, p. 211, held:

> "The Fourteenth Amendment does not deny to the State power to exclude a foreign corporation from doing business or acquiring or holding property within it." (Cases cited.)

The testimony that foreign non-profit corporations have been treated alike in all respects by the office of the Attorney General is not disputed by any evidence offered on behalf of the corporation. In fact, the total dearth of evidence on behalf of the corporation really presents a question of law for determination because the facts developed show only that the application for domestication was filed and that it was subsequently denied.

The order of the Court of Appeals is in direct conflict with the doctrine of exclusion for the reason that by it the District Court is required to order officers of the State of Mississippi to admit the New York corporation to engage in intrastate business in Mississippi on a mere showing that an application to so engage in business was made and that the application was denied.

Failure of this Court to review the opinion of the Court of Appeals will have the effect of abolishing the doctrine of exclusion in this case. The abolition will come, not by the Court wherein the doctrine originated, was respected for years and relied upon by the several states, but by a Court of Appeals. A shadow will be cast upon the very existence of the doctrine until such time as this Court shall remove the doubt.

## IV.

## The Court of Appeals Misconceived, Misapplied and Misconstrued a Decision of the Supreme Court in Arriving at Its Conclusion That the District Court Order Affirmative Relief to the Foreign Corporation Against the State of Mississippi.

The doctrine of exclusion was recognized in the case relied upon by the Court of Appeals as its sole authority for directing that the order of approval of the application

for domestication be entered.[15] This Court passed the doctrine of exclusion in that case by stating:

> "There is no occasion in this case for us to consider how much survives of the principle that a State can impose such conditions as it chooses on the right of a foreign corporation to do business within the State, or can exclude it from the State altogether."[16]

and held that that case involved freedom of individuals to associate instead of the right of a corporation to do business. As between these petitioners and the respondent there is no other issue except the privilege of a corporation to do business in Mississippi. The freedom of individuals to associate is not in issue in this phase of the case.[17]

The issue in *N.A.A.C.P.* v. *Alabama*[18] was the right of a state to enjoin the association of the members of the corporation with the corporation. The issue in this case is the right of that corporation to force itself upon the state when no attempt has been made to interfere with its activities or the rights of its members.

*N.A.A.C.P.* v. *Alabama*[19] does not support the conclusion reached by the Court of Appeals for the reasons that: (1) jurisdiction of the Court to enter the order that it did was waived by Alabama having brought the suit; (2) granting the right to foreign corporations to do business in Alabama is, by virtue of Alabama statutes, a ministerial function on the part of the Secretary of State; and (3) the order directed to be entered in that case was the

15. *N.A.A.C.P.* v. *Alabama*, 377 U.S. 288.
16. *Crescent Cotton Oil Co.* v. *Mississippi*, 257 U.S. 129.
17. *Hurn* v. *Oursler*, *supra*.
18. *N.A.A.C.P.* v. *Alabama*, 377 U.S. 288.
19. *Ibid.*

result of the case having been brought before the Supreme Court four different times and could be considered in the nature of the Court's version of justice to a vanquished foe in order to finally dispose of the matter.

The relief ordered to be granted in that case was a result of militant aggressiveness on the part of the State of Alabama. In the case at bar, the only militancy shown is the testimony of the State Attorney General that he does not agree with the corporation's approach to problems and for that reason does not believe that the State should place its stamp of approval on the corporation. No militancy whatsoever has been shown by the record toward the individual members of the corporation by any of these petitioners.

The Court of Appeals found: (1) That the Secretary of State notified the corporation that it was required to domesticate; (2) That the legal reasons shown by the record to have been given by the Attorney General and his assistant were not sufficient to warrant a denial of the application for domestication; and *a gratia* (3) the Governor, who gave no reason for the exercise of his executive discretion in withholding his approval entirely, must with the other officials approve the application. The Court of Appeals then ordered the District Court to issue a mandatory injunction whereby these petitioners are ". . . required to approve the application for domestication of the NAACP and to take all necessary and proper steps to entitle it to do business in the State of Mississippi."

The Court of Appeals states:

"Prior to 1963 it (corporate appellant) carried on these activities in the State of Mississippi through unincorporated affiliates, although it maintained its own offices in the state; while in 1962 it received

notice from the Secretary of State that the Mississippi Code had been amended, effective January 1, 1963, to require foreign non-profit corporations to domesticate in order to do business in the State."

That finding of the Court of Appeals cannot be based upon any fact developed in the record for the reason that the record fails wholly to reflect that any such notice was given to the corporation, or anyone for that corporation, by the Secretary of State. Indeed, the complaint does not even allege that such notice was given.

Appellate courts cannot make a factual determination which may be decisive of vital rights where crucial facts have not been developed.[20]

Sec. 5319, Miss. Code of 1942, Recp., as amended in 1962, effective January 1, 1963, was a part of the enactment of the Mississippi Business Corporation Act."[21]

This Court should not enjoin the enforcement of any part of that statute because no proper basis for declaring the statute invalid as provided by law has been followed.[22] The State has not sought to enforce its provisions against the corporation. The petitioner Attorney General has not attempted to enjoin the activities of the corporation or any of its members.[23] The record is clear that the activities of the corporation and its members go on unabated.

It is emphasized at this point that no showing whatsoever is made in this record of any attempt on the part of any of these petitioners to deprive any of the individual

20. *Price v. Johnson*, 334 U.S. 266.

21. See Appendix C.

22. 28 *USCA* 2281, et seq.

23. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Bates* v. *City of Little Rock*, 361 U.S. 516; *Louisiana, ex rel., Jack Gremillion* v. *N.A.A.C.P., et al.*, 366 U.S. 293.

members of the corporation of their right to free speech, assembly, protest and peaceful picketing or indeed to deprive them of their right to membership in the corporation. The rights of individual citizens of the United States to enjoy privileges and immunities guaranteed to them by the *Fourteenth Amendment* are not involved in this petition for certiorari. No such deprivation of constitutional rights or attempt at such deprivation is shown by the record to exist insofar as these petitioners and Count II of the original complaint are concerned. The language of the Attorney General quoted by the Court of Appeals of differences between the corporation and its approach to problems and his own is not entitled to be compared with the allegations for injunction as was done by the Court of Appeals to substantiate its application of *NAACP* v. *Alabama*[24] to the case at bar.

V.

**Corporations Are Not Citizens Entitled to Privileges and Immunities but Are Persons Entitled to Due Process and Equal Protection.**

There is a total absence of proof that the denial of the application of the foreign non-profit corporation to become domesticated in Mississippi effects or affects the constitutional rights of any individual members thereof or of any citizen of the United States. As heretofore observed, the only issue presently pending is the right of a foreign non-profit corporation through the good offices of the Court to force itself upon the State of Mississippi.

The question then is not whether any constitutional right of any individual citizen has been violated but whether the corporate respondent is vested with a con-

24. 377 U.S. 288.

stitutional or statutory right to do business in the State of Mississippi and the propriety of the issuance of the permanent mandatory injunction to accomplish that result.

The *Fourteenth Amendment* has never been construed to vest "privileges and immunities" in corporations. "Privileges and immunities" protected by that constitutional amendment are limited to ". . . citizens of the United States. . . ." The very nature of the "privileges and immunities" protected by the amendment are such that artificial legal entities, *i.e.*, corporations, are incapable of exercising or enjoying them. The "privileges and immunities" of citizenship can only be enjoyed by citizens. Corporations are not and cannot be made citizens capable of exercising "privileges and immunities" of citizenship.

That a corporation is not a citizen entitled to privileges and immunities has been consistently upheld by the United States Supreme Court.

> "A corporation is not a citizen, within the meaning of the constitutional provision, and hence has not the privileges and immunities secured to citizens against state legislation. *Orient Ins. Co.* v. *Daggs,* 19 S. Ct. 281, 282, 172 U.S. 557, 43 L. Ed. 552, citing *Paul* v. *State of Virginia,* 75 U.S. (8 Wall.) 168, 19 L. Ed. 357."
>
> (Citing numerous cases.)
>
> "A corporation is not a 'citizen', within U.S.C.A. Const. Amend. 14, as to the abridgment of privileges and immunities of citizens, . . ."[25]

25. *Words and Phrases, Permanent Edition,* Volume 7, page 261.

It is established that a corporation cannot affirmatively assert for others rights which it itself does not have or enjoy.[26]

It is as equally well settled that corporations are persons within the Federal and State Constitutions guaranteeing to all persons due process and equal protection of law,[27] as it is that corporations are not citizens possessing "privileges and immunities" as such.

The record clearly reflects in this case that the corporate respondent has been treated equally and in the same manner as all other foreign non-profit corporations similarly situated and that due process and equal protection of the law has therefore been satisfied.

The order of the Court of Appeals is in direct conflict with the authorities cited above and the principle of distinction between corporations and natural persons heretofore established, recognized and repeatedly approved by this Court. It is apparent that the Court of Appeals overlooked the distinction in rendering its opinion and order. The distinction was established by this Court as a matter of Federal constitutional law and since the opinion of the Court of Appeals is in conflict therewith, we submit that ground alone is sufficient to justify this Court to review the opinion by certiorari.

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26. *Hague* v. *Committee for Industrial Organizations*, 307 U.S. 496.

27. *Words and Phrases, Permanent Edition*, Volume 32, page 351.

## CONCLUSION

For the reasons set forth above, it is respectfully submitted that the writ of certiorari should be issued.

Respectfully submitted,

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By .....

## PROOF OF SERVICE

The undersigned, Attorney of Record for petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of May, 1966, I served copies of the foregoing petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit, by depositing same in a United States Post Office, with sufficient first class postage prepaid, addressed to:

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